

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the
Implementation of the Suspension of Direct
Access Pursuant to Assembly Bill 1X and
Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**CHIEF ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING SCHEDULE FOR FILING OF ANY APPLICATION
FOR REHEARING OF DECISION (D.) 03-07-028 AND/OR D.03-07-030
AND RESPONSES TO ANY APPLICATION FOR
REHEARING OF THESE DECISIONS**

The Commission adopted Decision (D.) 03-07-028 and D.03-07-030 at the meeting of July 10, 2003. In D.03-07-028, the Commission adopted its policies and mechanisms to implement CRS applicable to "Municipal Departing Load" ("MDL"), within the service territories of California's three major electric investor-owned utilities. In D.03-07-030, the Commission determined the appropriate level of the Direct Access ("DA") cost responsibility surcharge ("CRS") cap effective for the period subsequent to July 1, 2003.

Senate Bill 31 of the First Extraordinary Session of 2001-2002 ("SB 31X"), Stats. 2001, ch. 9, amended Public Utilities Code Section 1731, and added Public Utilities Code Section 1768. SB 31X provided for an expedited application for rehearing process for any decision that construes, applies, implements, or interprets the provisions of Assembly Bill No. 1 of the First Extraordinary Session of 2001-2002 ("AB 1X:"), Stats. 2001, ch. 4.

D.03-07-028 and D.03-07-030 are subject to Public Utilities Code Section 1731(c) (applications for rehearing are due within 10 days after the date issuance of the order or decision) and Public Utilities Code Section 1768 (procedures applicable to judicial review) are applicable. (Pub. Util. Code, §§ 1731, subd. (c) & 1768.)¹ Further, Public Utilities Code Section 1731(c) gives the Commission 20 days to dispose of any rehearing application that is filed. (Pub. Util. Code, § 1731, subd. (c).) Accordingly, SB 31X provides for an expedited application for rehearing process that essentially has a 30-day timeframe.

However, there are 42 days between July 10, 2003 (the date of the Commission meeting at which these decisions were adopted) and the next Commission meeting, currently scheduled for August 21, 2003. Thus, to facilitate compliance with Public Utilities Code Sections 1731(c) and 1768, D.03-07-028 and D.03-07-030 will not be issued (mailed) until July 22, 2003.

Pursuant to Section 1731(c) of Public Utilities Code, applications for rehearing of these decisions must be filed by August 1, 2003.² Also, it is requested that any application for rehearing should address only one of the decisions. Any application for rehearing shall be served by electronic mail

¹ In the decisions, the Commission specifically noted the applicability of § 1731(c), and in particular the 10-day time for filing applications for rehearing.

² Section 1731(c) requires that as a prerequisite for filing a cause of action “in any court,” an application for rehearing of a Commission decision construing, applying, or implementing the provisions of AB1X must be filed within 10 days after the date of issuance of the decision. (Pub. Util. Code, § 1731, subd. (c).) The 10 days is jurisdictional.

on those parties who have provided an e-mail address, and by first class mail or other expeditious mode of delivery to those who have not provided an e-mail address. In addition, each application for rehearing shall also be electronically served on the following Commission staff: Mary McKenzie (mfm@cpuc.ca.gov).

As discussed above, Section 1731(c) of the Public Utilities Code also requires the Commission to “issue its decision and order on rehearing within 20 days after the filing of that application.” In order to issue decisions and orders on any applications for rehearing of D.03-07-028 and D.03-07-030 within the applicable timeframe, the Commission will need to take up consideration of them at its regularly scheduled meeting on August 21, 2003.

Pursuant to Rule 86.2 of the Commission’s Rules of Practice and Procedure, a response to an application for rehearing may be filed no later than 15 days after the day the application for rehearing is filed. Consequently, under the expedited schedule, responses would not be due until August 18, 2003 (since August 16 is a Saturday), three days before the August 21, 2003 Commission meeting. Therefore, so that the Commission may consider responses to any applications for rehearing that may be filed, the time for filing responses must be shortened. Although the Commission is not obligated to withhold a decision on an application for rehearing to allow time for a response to be filed,³ the time for filing a response to any application for rehearing shall be shortened to August 11, 2003.

³ See Rule 86.2 of the Commission’s Rules of Practice and Procedure.

Accordingly, any party planning to file a response to any application for rehearing shall file and serve the response on or before August 11, 2003. Any response shall be served by electronic mail on those parties who have provided an e-mail address, and by first class mail or other expeditious mode of delivery to those who have not provided an e-mail address. In addition, any responses shall also be electronically served on the following Commission staff: Mary McKenzie (mfm@cpuc.ca.gov).

IT IS RULED that:

1. With the issuance of D.03-07-028 and D.03-07-030 on July 22, 2003, any application for rehearing must be filed by August 1, 2003, and shall be served in the manner specified above.
2. The time for filing a response to any applications for rehearing of D.03-07-028 and/or D.03-07-030 that may be filed shall be shortened. Any party filing responses to such applications for rehearing shall file the responses on or before August 11, 2003, and shall serve the responses in the manner specified above.

Dated July 14, 2003, at San Francisco, California.

/s/ ANGELA K. MINKIN by PSW
Angela K. Minkin, Chief
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Chief Administrative Law Judge's Ruling Regarding Schedule for Filing Any Application for Rehearing of D.03-07-028 and/or D.03-07-030 and Responses to Any Application for Rehearing of These Decisions, on all parties of record in this proceeding or their attorneys of record.

Dated July 14, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.